IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5335 OF 2004

National Railway Mazdoor Union Petitioner

versus

Union of India and others Respondents

K.S.Bapat with A.H.Fatangare, adv. for petitioner.

Suresh Kumar with R.C.Master, adv. for R-1.

Sudhir Tabania i/by Sanjay Udeshi & Co; adv. for R-2.

Aasish Kumar with Anjani Singh, adv. for R-3.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 27th October 2004

PC :

1. Rule.

2. Learned counsel appearing for respondents waive service. By consent, rule is made returnable forthwith.

3. By this petition petitioner is seeking appropriate writ, order or direction directing respondents 1 and 2 to carry out verification/ secret ballot in respondent no.2 undertaking for

the purpose of recognition of Union and withdraw the extension granted to respondent no.3 by letter dated 3rd April 2004

4. Respondent no.2 Konkan Railway Corporation Limited was commissioned in 1998 as a Government of India undertaking. Petitioner and respondent no.3 are Trade Unions registered under the Trade Unions Act and are operating in respondent no.2 undertaking. It appears that petitioner as well as respondent no.3 and another union known as Bhartiya Kamgar Sena were claiming the status as a recognized union in respondent no.2 undertaking. Bhartiya Kamgar Sena filed a writ petition before this Court and in that writ petition direction was issued to respondents 1 and 2 for conducting a secret ballot to determine the majority union and to confer the status of recognized union. The secret ballot was carried out in the year 1998 and respondent no.3 Union was elected as a recognized union under the Code of Conduct. As per the Code of Conduct, recognition was for a period of two years. The period of two years has already expired and recognition of 3rd respondent is being continued by granting extension from time to time.

5. The petitioner union made a representation to

respondent no.3 for a fresh verification for the purpose of recognition of union since recognition granted to respondent no.3 had expired. It appears that Assistant Commissioner of Labour (Central) had called for a meeting to discuss the issue of recognition. However, nothing seems to have come out in the said meeting. Respondent no.2 vide letter dated 21st March 2004 has sought guidance from respondent no.1 Union of India on the issue of carrying fresh verification process. Learned counsel for Union of India has informed the Court that Union of India is not concerned with this issue and the decision in that regard will have to be taken by respondent no.2.

6. Our attention was drawn to an unreported decision of Division Bench of this Court in ONGC Karmachari Sanghatana Vs. Ministry of Petroleum and others (Writ Petition No.1785 of 1997, decided on 5th May 1998). The Division Bench has held that secret ballot is the appropriate procedure for ascertaining majority of the union. In the light of decision of this Court, the parties have no objection for a fresh verification process to be carried out by the Assistant Commissioner by secret ballot. We, therefore, direct the Regional Labour Commissioner to adopt the method of Secret Ballot

for ascertaining the claim of majority membership of the Unions within eight weeks from today. Respondent nos.1 and 2 shall thereafter take a decision in the matter of recognition within further period of three weeks. Recognition which has been granted to respondent no.3 shall continue till fresh decision is taken by respondents 1 and 2 as indicated above. Petition is accordingly disposed of.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)